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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-720]

### **CERTAIN SILICON MICROPHONE PACKAGES AND PRODUCTS CONTAINING THE SAME; DETERMINATION TO RESCIND IN PART THE LIMITED EXCLUSION ORDER ENTERED ON JUNE 12, 2009**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to rescind in part the exclusion order entered on June 12, 2009 against respondent MEMS Technology Berhad (“MemsTech”) in the subject investigation to remove references to claim 1 of U.S. Patent No. 6,781,231 (“the ’231 patent”) and claims 1, 2, 17, and 20 of U.S. Patent No. 7,242,089 (“the ’089 patent”).

**FOR FURTHER INFORMATION CONTACT:** Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 14, 2008, based on a complaint filed by Knowles Electronics LLC (“Knowles”). 73 Fed. Reg. 2277 (Jan. 14, 2008). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain silicon microphone packages and products containing the same that infringe claims 1 and 2 of the ’231 patent and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of the ’089 patent. The complaint named MemsTech as the respondent.

On June 12, 2009, the Commission issued a limited exclusion order (“the June 12, 2009 exclusion order”) prohibiting the unlicensed entry into the United States of MemsTech silicon microphone packages that infringe claims 1 and 2 of the ’231 patent and claims 1, 2, 9, 10, 15, 17, 20, 28, and 29 of the ’089 patent. 74 Fed. Reg. 28724 (June 17, 2009). On October 13, 2009, MemsTech appealed the Commission’s determination to the U.S. Court of Appeals for the Federal Circuit. On June 3, 2011, the Federal Circuit affirmed the Commission’s final determination. *MEMS Technology Berhad v. Int’l Trade Comm’n*, No. 2010–1018, 2011 WL 2214091 (Fed. Cir. June 3, 2011) (unpublished).

On December 16, 2009, the Commission instituted *Certain Silicon Microphone Packages and Products Containing the Same*, Inv. No. 337-TA-695, in response to a different complaint filed by Knowles. 74 Fed. Reg. 68077 (Dec. 22, 2009). The complaint in Inv. No. 337-TA-695 alleged a violation of section 337 based on infringement of claim 1 of the ’231 patent and claims 1, 2, 7, 16, 17, 18, and 20 of the ’089 patent. The complaint named Analog Devices Inc. as the respondent. On November 22, 2010, the ALJ issued a final ID finding that all of the asserted patent claims are invalid under 35 U.S.C. §§ 102 and 103, based on prior art not previously

considered in the above-captioned investigation. On January 21, 2011, the Commission issued a notice determining not to review a majority of the ALJ's determinations on patent validity, which resulted in a final determination that claim 1 of the '231 patent and claims 1, 2, 7, 16, 17, 18, and 20 of the '089 patent are invalid. Knowles appealed the Commission's final determination to the Federal Circuit (Appeal No. 2011-1260), but Knowles later withdrew its appeal before the appeal was decided.

On August 9, 2011, respondent Memstech petitioned the Commission in the above-captioned investigation to rescind all directives in the June 12, 2009 exclusion order that are based on claim 1 of the '231 patent and claims 1, 2, 17, and 20 of the '089 patent because the Commission determined those claims are invalid in Inv. No. 337-TA-695. On August 22, 2011, complainant Knowles filed an opposition to Memstech's petition.

The Commission has determined that its invalidity determinations in Inv. No. 337-TA-695 constitute changed circumstances and justify partial rescission of the June 12, 2009 exclusion order entered in the present investigation. The Commission has determined to rescind the portions of the June 12, 2009 exclusion order that refer to claim 1 of the '231 patent and claims 1, 2, 17, and 20 of the '089 patent. All other provisions of the June 12, 2009 exclusion order remain in effect.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

By order of the Commission.

James R. Holbein  
Secretary to the Commission

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